

Respondent and its insurance carrier contend Judge Avery erred. They argue the Order for Medical Treatment should be reversed as claimant failed to prove he further injured his left shoulder at work following the December 2005 accident. They argue claimant's testimony regarding his worsening symptoms was inconsistent and, moreover, not supported by the medical evidence.

Conversely, claimant argues his left shoulder symptoms increased as he performed his regular work duties until June 6, 2006, when he was finally given lighter work. Claimant argues his regular work duties required overhead lifting and helping lift some garage doors weighing as much as 200 pounds. In short, claimant contends his testimony, coupled with that of co-worker Dane Robinson, clearly established his left shoulder worsened as he continued to work for respondent. Accordingly, claimant requests the Board to affirm the Order for Medical Treatment.

The only issue the parties have raised on this appeal is whether claimant further injured or aggravated his left shoulder while continuing to work for respondent following the December 14, 2005, incident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

Claimant worked for respondent loading garage doors into trucks. On December 14, 2005, claimant alleges he injured his left shoulder when a co-worker, Norman, dropped a 16-foot door, which caused claimant to strike his left shoulder on the door.

Claimant testified he promptly gave notice of that incident to his supervisor, Christopher Healy, but claimant did not specifically request medical treatment. Mr. Healy, however, denies being notified of the incident. In addition, respondent's safety administrator, Teresa Fowler, testified that Norman Grafton was no longer working for the company at the time of the alleged accident.

In January or February 2006, claimant developed a lump or mass on his left shoulder. Claimant reported the lump to the company nurse and was referred to Dr. Jeffrey C. Randall for drainage of a cyst or orthopedic care. When claimant saw Dr. Randall on April 10, 2006, for the mass, claimant did not complain that he was having increasing left shoulder symptoms. Instead, the doctor's notes reflect that claimant was only concerned about the left shoulder mass and that he told the doctor that it had been growing for the past year. During the examination, Dr. Randall found claimant had some pain in the AC joint in both shoulders, both of which were otherwise stable and displaying a full range of motion. Moreover, claimant testified that when he saw Dr. Randall the aches and pains that he was experiencing in his left shoulder were nothing unusual as everybody who works on respondent's docks experiences pain.

Dr. Randall requested an MRI of the left shoulder mass. The MRI revealed a benign-appearing lipoma superior to the AC joint, a full thickness tear of the supraspinatus

tendon, and a cyst extending from the tear into the muscle belly of the supraspinatus tendon.

After receiving the MRI results, Dr. Randall recommended the removal of the shoulder mass, subacromial decompression, distal clavicle excision, and repairing the rotator cuff. The doctor noted in the history section of both his April 10 and 17, 2006, notes that claimant had a previous wrestling injury to his AC joint. And the MRI report also references a wrestling injury. Nevertheless, claimant denies hurting his left shoulder wrestling and, instead, insists the wrestling injury was to his neck.

In April 2006, contemplating shoulder surgery, claimant applied for disability benefits through respondent. A box was checked on the application for those benefits that indicates claimant's shoulder problems were not work-related. Claimant denies checking that box. But respondent's Dianna Winsley, who works in respondent's "people department," testified that claimant checked the box as she reviewed the document when claimant returned it to her.

At the request of respondent and its insurance carrier, on May 4, 2006, Dr. Michael Geist examined claimant. The doctor noted the large mass on claimant's left shoulder but only a small amount of anterior shoulder tenderness. In addition, the doctor noted claimant had adequate range of motion in the shoulder and that he only complained of shoulder discomfort at the extremes. Dr. Geist believed a rotator cuff injury could occur as claimant described the incident of December 2005 but it was hard to correlate claimant's shoulder symptoms to that incident due to the time that had elapsed.

Claimant's attorney enlisted Dr. Edward J. Prostic to evaluate claimant for purposes of this claim. The doctor saw claimant on May 15, 2006, and concluded claimant injured his left shoulder on December 14, 2005, while working for respondent. Dr. Prostic did not testify but his May 15, 2006, medical report was entered into evidence for purposes of the preliminary hearing. The doctor noted that claimant disagreed with Dr. Randall's comments that claimant had previously injured his left shoulder wrestling. Dr. Prostic's report does not indicate that claimant's work was aggravating his left shoulder, but the doctor noted claimant was having an ongoing ache in his shoulder and that he was having difficulty lifting and carrying doors. Moreover, the doctor found during the examination that claimant was experiencing obvious discomfort abducting and flexing against resistance with significant weakness of external rotation against resistance.

Claimant also presented the testimony of co-worker Dane Robinson, who drives a forklift on respondent's docks. According to Mr. Robinson, who testified by deposition in late June 2006, claimant's shoulder had worsened over the preceding two or three months. Mr. Robinson testified, in part:

Yes. I would say within the last two or three months it's gotten worse.

. . . .

Because he, he hasn't been -- I've see him struggling more, and Dennis is not one to complain about things. I have never seen him complain, but he's said it's hurt, he's said it's hurt. Out on break he's said, "Oh, my shoulder's killing me," and I've seen him kind of try to lift up a door and have to put it down (indicating).¹

Although there may be questions surrounding the alleged December 2005 incident and whether claimant immediately notified his supervisor of that incident or whether he had previously injured his left shoulder wrestling, nonetheless, the critical issue at this juncture is whether claimant aggravated or further injured his left shoulder as a result of the work he performed for respondent after December 14, 2005. Claimant testified that his left shoulder worsened and deteriorated to the point that it began giving way. Indeed, claimant testified at the preliminary hearing that he was having constant shoulder pain and that he could hardly lift.

Judge Avery observed claimant testify along with three representatives of respondent. Despite any inconsistencies in the testimony, the Judge ruled in favor of claimant and found that claimant sustained a series of repetitive traumas after December 2005. The Board affirms that finding. Based upon claimant's testimony and Mr. Robinson's testimony, which is very credible, the Board is persuaded that claimant's left shoulder worsened as he continued to work after December 2005. The Board also finds it is more probably true than not that the heavy lifting claimant performed while working for respondent caused repetitive traumas to his shoulder.

Consequently, claimant has established his right to the medical treatment requested. And the Order for Medical Treatment should be affirmed.

WHEREFORE, the Board affirms the July 7, 2006, Order for Medical Treatment entered by Judge Avery.

IT IS SO ORDERED.

¹ Robinson Depo. at 10.

Dated this ____ day of September, 2006.

BOARD MEMBER

c: Chris Miller, Attorney for Claimant
Bret C. Owen, Attorney for Respondent and its Insurance Carrier